

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Tsigel	Team: Squad #4	CCRB Case #: 202004315	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/02/2020 8:18 PM	Location of Incident: West Street and Morris Street	Precinct: 01	18 Mo. SOL 12/2/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 06/16/2020 10:56 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/16/2020 10:56 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT David Lamarre	03547	947929	SRG 3
2. SGT Elliot Zinstein	05494	947634	TRN BUR
3. DT3 Chad Mack	06054	937000	VED ZN1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Patrick Connolly	12224	930038	SRG 3
2. POM Anthony Buonomo	09259	954579	SRG 3
3. POM Harvey Rabel	18646	937321	SRG 3
4. POM Scott Obenauer	23942	935422	SRG 4
5. POM Adam Muniz	31861	955234	SRG 1
6. POM Edward Mendez	00689	933017	020 PCT
7. LT Peter Sotiriou	00000	924515	SRG 3

Officer(s)	Allegation	Investigator Recommendation
A.SGT Elliot Zinstein	Force: Sergeant Elliot Zinstein used physical force against § 87(2)(b)	
B.DT3 Chad Mack	Force: Detective Chad Mack hit § 87(2)(b) against the ground.	
C.DT3 Chad Mack	Force: Detective Chad Mack restricted § 87(2)(b)'s breathing.	
D.SGT David Lamarre	Discourtesy: Sergeant David Lamarre spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On June 16, 2020, § 87(2)(b) filed this complaint on the CCRB website. On July 1, 2020, this case was closed pending litigation. On January 15, 2021, this case was reopened and investigated.

On June 2, 2020, at 8:18 PM, § 87(2)(b) was walking north on West Street in Manhattan when Sergeant Elliot Zinstein of the Training Bureau took her to the ground (**Allegation A – Force** – § 87(2)(g) Detective Chad Mack of the Vice Enforcement Division assisted in arresting § 87(2)(b) and allegedly slammed her head on the ground three times and then placed his hand or knee on her neck and restricted her breathing (**Allegations B and C – Force** – § 87(2)(g) Sergeant David Lamarre of Strategic Response Group 3 arrested § 87(2)(b) and spoke discourteously towards her (**Allegation D – Discourtesy** – § 87(2)(g) § 87(2)(g), § 87(4-b)

§ 87(2)(b) sustained two hematomas on her forehead (BR 08) and multiple scratches (BR 09) as a result of this incident.

§ 87(2)(b) was arrested and released with a summons (BR 10) for disobeying the 8:00 PM curfew on June 2, 2020, issued by Police Officer Patrick Connolly of Strategic Response Group 3, as a result of this incident. The summons was dismissed on July 1, 2020.

The CCRB received Body Worn Camera (BWC) videos across multiple protest cases, of which 13 were relevant to this incident (IA 107). Additionally, the CCRB received 5 videos (IA 63-67) and 4 photos (IA 59-62) that documented this incident, § 87(2)(b) injuries, and § 87(2)(b) social media post.

Findings and Recommendations

Allegation (A) Force: Sergeant Elliot Zinstein used physical force against § 87(2)(b)

A city-wide curfew was in effect from 8 PM on June 2, 2020, to 5 AM on June 3, 2020 (BR 01).

On June 2, 2020, § 87(2)(b) (BR 02) was an essential worker and was walking north on West Street in Manhattan on her way to work at the § 87(2)(b) at approximately 8:18 PM. § 87(2)(b) had her essential worker identification on a lanyard around her neck (BR 03). She observed a large group of officers attempting to disperse a large group of protestors on West Street due to an 8 PM city-wide curfew that was in place. When § 87(2)(b) reached the intersection of West Street and Morris Street Sergeant Zinstein tackled her to the ground from behind. Additional officers immediately assisted by handcuffing her and placing her under arrest.

Sgt. Zinstein was assigned to a mobile protest detail which was assigned to the West Side Highway protest. Sgt. Zinstein (BR 04) stated that he was informed by supervisors that everyone at the location of this incident was in violation of the curfew after 8:00 PM and was to be placed under arrest; however, he did not remember who instructed him to make the arrests. Essential personnel were allowed to be outside past the 8:00 PM curfew. He would determine if someone was essential personnel if they disclosed that to him, or by asking the individual himself. Sgt. Zinstein did not have an independent recollection of his interaction with § 87(2)(b) and stated that he could only speak to what he saw in his BWC footage.

Sgt. Zinstein was shown from 1:30 to 1:48 of his BWC footage (BR 05), in which § 87(2)(b) is seen walking up West Street with her back facing Sgt. Zinstein, and unaware that Sgt. Zinstein is approaching her. There are at least fifteen police officers in the vicinity of § 87(2)(b) and one civilian who is on the ground. Sgt. Zinstein runs towards § 87(2)(b) grabs her, tells her to get down, and takes her to the ground immediately without any prior instructions. Additional officers immediately approach § 87(2)(b) grab her, and begin to place her under arrest. Sgt. Zinstein immediately leaves the scene after the other officers approach. 0:00 to 0:30 of Police Officer Scott Obenauer's BWC video (BR 06) provides another angle of Sgt. Zinstein taking § 87(2)(b)

§ 87(2)(b) to the ground.

After viewing his BWC, Sgt. Zinstein stated that he took § 87(2)(b) to the ground because she was under arrest for violating the 8:00 PM city-wide curfew in place at the time. He did not remember why he made the decision to take § 87(2)(b) to the ground immediately without any prior instruction or effort to deescalate the situation. He did not know why he did not take steps to determine if she was an essential worker. He denied that he ever tackled § 87(2)(b) to the ground and stated that he guided her down.

The CCRB has six additional cases (202004684, 202003978, 202004048, 202004222, 202004232, 202100268) stemming from the same protest at West Street in Manhattan. The CCRB interviewed multiple supervisors who were involved in this protest. Inspector Gerard Dowling (Case# 202004684, IA 294), Deputy Inspector James McGeown (Case# 202003978, IA 412), Deputy Inspector Ronald Zedalis (Case# 202004048, IA 503), Captain Ronald Ramos (Case# 202004684, IA 302), Lieutenant William Buchanan (Case# 202004222, IA 290), and Lieutenant Michael Jennings (Case# 202004048, IA 443), were all present during this protest and all stated that they did not issue any instructions to officers regarding making arrests or issuing summonses if a civilian violated the 8:00 PM curfew during the protest.

Patrol Guide Procedure 221-01 (BR 07) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application of force must be reasonable under the circumstances. In determining whether the use of force is reasonable members of service should consider the nature and severity of the crime/circumstances, immediacy of the perceived threat or harm to the subject, members of the service and/or bystander, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, the number of subjects in comparison to the number of members of service (MOS), size, age, and condition of the subject in comparison to the MOS, and the presence of hostile crowd or agitators.

§ 87(2)(b), § 87(2)(g)

Allegation (B) Force: Detective Chad Mack hit § 87(2)(b) against the ground.

Allegation (C) Force: Detective Chad Mack restricted § 87(2)(b)'s breathing.

§ 87(2)(b) (BR 02) stated that while being placed under arrest by the additional officers, she repeatedly told them that she was an essential worker. While she was being handcuffed, Det. Mack slammed her head against the ground three times. § 87(2)(b) sustained two hematomas on her forehead (BR 08) and multiple scratches (BR 09) as a result of being slammed. Det. Mack then placed his hand or knee on the back of § 87(2)(b) neck for approximately ten seconds and restricted her breathing. § 87(2)(b) yelled that she could not breathe twice. § 87(2)(b) was positioned face down on the ground. After she was handcuffed, she was transported to the Mass Arrest Processing Center (MAPC) in Brooklyn. She was later transported to § 87(2)(b)

Hospital in Brooklyn and received treatment for her injuries. After being treated, she was transported back to MAPC and stayed the night in a cell. She was released the following morning with summons for violating the 8PM curfew (BR 10).

Det. Mack (BR 11) stated that he observed officers handcuffing § 87(2)(b) and approached her to assist the other officers. Det. Mack placed his right hand on § 87(2)(b) shoulder area to hold her down against the ground. He did not take any other actions while assisting the other officers. Det. Mack denied slamming § 87(2)(b) head against the ground, placing any part of his body on § 87(2)(b) neck, restricting her breathing in any way, or seeing any other officer do that. Det. Mack was shown both videos noted below and reaffirmed that his hand was on § 87(2)(b) shoulder and that the videos do not provide a clear angle.

From 0:00 to 0:30 of PO Obenauer's BWC video (BR 06) § 87(2)(b) is seen being taken down to the ground by Sgt. Zinstein and additional unknown officers restraining her. At 0:18 Det. Mack is seen with his arm in the vicinity of § 87(2)(b)'s head however it is not seen where he is making contact or if he is applying any amount of pressure with his arm. From 1:20 to 1:50 of Sgt. Lamarre's BWC video 2/3 (BR 12) Sgt. Lamarre is seen placing § 87(2)(b) in flex cuffs. At multiple points throughout the footage, Det. Mack's hand is seen around § 87(2)(b)'s head on the very left of the frame, however it is not seen where he is making contact or if he is applying any amount of pressure with his arm. Additionally, § 87(2)(b) is continuously heard saying that she is essential personnel and that she is compliant. She is not heard saying that she cannot breathe. The videos do not show any officer hitting § 87(2)(b) head in any way, slamming it against the ground, or placing their knee in the vicinity of her neck. The videos do not capture a clear and complete angle of § 87(2)(b) head and neck.

§ 87(2)(b), § 87(2)(g)

Allegation (D) Discourtesy: Sergeant David Lamarre spoke discourteously to § 87(2)(b).

This allegation was not made by § 87(2)(b) and was heard in Sgt. Lamarre's BWC footage.

At 0:25 of Sgt. Lamarre's BWC footage (BR 12), Sgt. Lamarre approaches an unknown individual who is being placed under arrest by additional unknown officers and he is heard saying "Put your fucking hands behind your back." He leaves the scene and continues walking down the block. At 1:00 Sgt. Lamarre is seen approaching § 87(2)(b) while she is being restrained on the ground by at least five additional unknown officers. He assists the officers in placing § 87(2)(b) in handcuffs and arresting her and he is heard saying "Put your fucking hands behind your back." The BWC shows that there is a large group of officers and a large group of protesters at the location and multiple arrests being executed. There were no protestors in the immediate vicinity of § 87(2)(b) and the officers restraining her.

Sgt. Lamarre (BR 13) stated that he observed § 87(2)(b) being handcuffed and arrested by additional officers and approached them to assist the officers in restraining her. Sgt. Lamarre did not remember if he or any other officers used any profanities during this incident but stated that if he did then it would be to gain compliance and control of the situation by using a stern voice. Sgt. Lamarre was shown from 1:00 to 1:10 of his BWC footage (BR 12) in which he is heard saying "Put your fucking hands behind your back." Sgt. Lamarre did not know if he or any other officer made this statement and did not know if that was his voice which said it.

Patrol Guide Procedure 200-02 (BR 14) states that the department is committed to treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than is generally expected of others.

DCT Case no. 2018-18951 (BR 20) states that officers must act with decorum in their

interaction with civilians. It further states that disciplinary cases “have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer’s verbal slip does not rise to the level of actionable misconduct.”

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one other CCRB complaint in which she was not a victim (BR 17).
- Sergeant Elliot Zinstein has been a member of service for 12 years and has been a subject in 8 CCRB complaints and 30 allegations, none of which were substantiated. § 87(2)(g)
- Detective Chad Mack has been a member of service for 16 years and has been a subject in 6 other CCRB complaints and 11 allegations, of which 1 was substantiated.:
 - 201402139 involved a substantiated allegation of a frisk against Det. Mack. The board recommended instructions and the NYPD imposed instruction and formalized training.
 - § 87(2)(g)
- Sergeant David Lamarre has been a member of service for 12 years and has been a subject in 10 other CCRB complaints and 16 allegations, of which one was substantiated.:
 - 201604671 involved a substantiated allegation of a vehicle search against Sgt. Lamarre. The Board recommended command discipline and the NYPD did not impose any discipline.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming severe and permanent physical and personal injury and is seeking 10 million dollars as redress (BR 18). There is no 50H hearing scheduled.

- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR 19).
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Squad No.: 4

Investigator:	<u>Edward Tsigel</u>	<u>Investigator Edward Tsigel</u>	<u>07/08/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Raquel Velasquez</u>	<u>IM Raquel Velasquez</u>	<u>07/08/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date